IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Smt. Dropadi Avasthi Vs. State of Rajasthan & ors.

S.B.CIVIL WRIT PETITION NO.4083/2002.

Under Article 226 of the Constitution of India.

Date of Order :: 24th August, 2006.

PRESENT

HON'BLE MR JUSTICE MOHAMMAD RAFIQ

Mr S.G. Ojha, for the petitioner.
Mr Rameshwar Dave, Dy. Government Advocate, for the respondents.

BY THE COURT:

In this writ petition, the petitioner has prayed for a direction to the respondents to grant her benefit of Rule 26A of the Rajasthan Civil Services Rules (for short "RSR") while fixing her pay on 2.7.93 on completion of 18 years of service as per the provisions contained in circular dated 25.1.92 and fix him at Rs. 7900/- on 1.9.1996 per month in the pay scale of Rs. 6500-10500. The petitioner has further prayed that the order dated 11.5.2000 (Annex.3) and the order dated 18.8.2000 (Annex.4)

and order Annexure-5 for recovery of excess amount paid to the petitioner, may be declared illegal and may be quashed and set aside.

I have heard the learned counsel for the petitioner Mr S.G. Ojha and learned Dy. Government Advocate Mr Rameshwar Dave.

Shri S.G. Ojha, learned counsel for the petitioner argued that the petitioner was initially appointed on the post of Teacher Gr.III on 3rd August, 1968 and was later promoted on the post of Teacher Gr.II on 2nd July, 1975. Her pay scale on the post of Teacher Gr.II was revised as per the Revised Pay Scale Rules of 1981 and she was fixed in the pay scale of Rs. 625-1120/- in the year 1981. In the meantime, the State Government issued a circular dated 23.1.85 thereby granting benefit of selection scale to its employees who had completed 15 years of service. However, the petitioner was not granted such benefit. According to him, the petitioner was entitled to be granted this selection scale on completion of 15 years of service in the pay scale of Rs. 640-1180 which was later revised to 1160-2360 with all consequential benefits. The learned counsel further argued that the State

Government came out with another circular dated 25.1.92 providing for grant of selection scale to its employees on completion of 9, 18 and 27 years of service respectively. According to him, the petitioner was entitled to grant of second selection scale on completion of 18 years of service on 2nd July, 1993 such period of 18 years has been counted from the date petitioner was promoted on the post of Teacher Gr.II vide order dated 2nd July, 1975. He argued that petitioner was entitled to grant of second selection scale w.e.f. 2.7.1993 in the pay scale of Rs. 2000-3500 and she was also entitled to be granted benefit of Rule 26A of RSR. It was further argued that vide order dated 11.5.2000, the respondent No. 5 illegally held that after grant of selection scale in the pay scale of Rs. 2000-3200 on 2.7.90 on completion of 15 years as per the earlier circular, the petitioner could not be paid second selection grade on completion of 18 years. On the basis of such wrong interpretation placed on circular dated 23.1.95 and 25.1.92, the respondents have illegally ordered recovery of a sum of Rs.38,329/- vide Annex.5. Thus, the order dated 11.5.2000 (Annex.3) and the recovery ordered pursuant thereto vide Annex.5 are liable to be declared illegal and these orders may be quashed and

set aside.

On the other hand, learned Dy. Government Advocate, Mr Rameshwar Dave argued that petitioner was initially appointed as Teacher Gr.III vide order dated 3rd August, 1968 and was granted first promotion on the post of Teacher Gr.II vide order dated 2nd July, 1975. She was thereafter promoted on the post of Senior Lecturer on 25.2.95. He argued that so far as service period of 15 years is concerned, it should be counted from the date of her promotion as Teacher Gr.II w.e.f 2.7.75, therefore, she shall be entitled to be fixed in the pay scale of 2000-3200 on completion of 15 years on 2.7.90 when the petitioner was already granted second selection scale. He argued that selection scales are granted to the government employees who are facing stagnation and are not promoted in a specified time period. When the petitioner was first promoted on 2.7.75, she would be entitled to second selection scale on completion of 15 years of service on 2.7.90 and accordingly she was fixed in the pay scale of Rs. 2000-3200 as on 2.7.1990. Since she was granted the benefit of two grade increments, therefore, as per Rule 31 of RSR, her date of increment was changed. It was aruged that having

once secured the second selection scale on completion of 15 years as per circular dated 25.1.85, the petitioner cannot be granted second selection scale yet again on 2.7.93 on completion of 18 years as per Government circular dated 25.1.92. Since the petitioner has already been granted benefit of two increments at the time of granting second selection scale on completion of 15 years of service, she was not entitled to get benefit of Rule 26A of the RSR. As far as third selection scale is concerned, before the petitioner could complete 27 years of service, she was again promoted on the post of Senior Lecturer on 25.2.95 in the pay scale of Rs. 2000-3500/-, therefore, she was not entitled to such third selection scale. When the Rules of 1996 came into force, the petitioner was already drawing her salary in the pay scale of 2000-3500 at the stage of 2375/- on revision of pay scale and her salary was fixed in the pay scale of Rs. 6500-10500/- at the stage of Rs. 7300 w.e.f. 1.9.1996. The learned Dy. Government Advocate, therefore, argued that in these circumstances, the grant of second selection scale to the petitioner w.e.f. 2.7.93 presumably on completion of 18 years of service was based on an order passed by mistake committed by the respondents and accordingly, the

same was rectified by ordering recovery of excess amount already paid to the petitioner. Thus, the present petition is liable to be dismissed.

I have considered the arguments advanced by both the learned counsel and perused the record.

From perusal of circular dated 23.1.85 as also circular dated 25.1.92 it would be clear that in both these cases, the Government had came out with a scheme for grant of selection scale to its employees on completion of specified time period, if within that they have not been promoted. While in the circular dated 23.1.85, this period was initially fixed as 15 years, in the subsequent circular dated 25.1.92 which is somewhat more comprehensive, it has been provided that the Government servants shall be entitled to first, second and third selection scale provided they have not been promoted in the meantime during the span of 9 years each as aforesaid. Clause (3) of circular dated 25.1.92 however provided that the period of service of 9, 18 and 27 years, as the case may be, shall be counted from the date of first appointment in the existing cadre/ service in accordance with the provisions contained in the Recruitment rules. Second proviso to this

clause, however provided that if an employee subsequent to his last appointment to a post in a cadre / service in accordance with the provisions contained in the relevant Service Rules, is promoted to a post in some other cadre / post from the date of such promotion shall be taken into consideration for the purpose of grant of selection scale. Similar was the scheme in the Government circular dated 23.1.85 which also provided for grant of selection scale for the inability of the Government to grant them promotion, if they have not been granted promotion during such period of 15 years.

In the present case, the petitioner was initially appointed as Teacher Gr.II on 3rd August, 1968 and was able to secure first promotion on the post of Teacher Gr.II on 2nd July, 1975 when the circular dated 23rd to 1985 was in vogue, and therefore, he was rightly granted the selection scale in the pay scale of Rs. 2000-3200 on completion of 15 years of service on 2.7.90. Yet another selection scale to her in the pay scale of Rs. 2000-3000 within three years thereafter on 2.7.93 was obviously based on misinterpretation of circular dated 25.1.92 especially of second proviso to its clause (3). Second proviso to clause (3)

clearly provided that if an employee subsequent to his last appointment to a post in a cadre / service in accordance with the provisions contained in the relevant Service Rules, is promoted to a post in some other cadre, service from the date of such promotion shall be taken into consideration for the purpose of grant of selection scale. It should thus become clear that when initial appointment of the petitioner was made on 3rd August, 1968, her promotion to the next higher post i.e. Teacher Gr.II on 2.7.75 obviously changed her cadre. The period of 15 years was, therefore, rightly counted for grant of second selection scale from 2nd July, 1975 because Class (4) of Item 2 of circular dated 23.1.85 also contained similar provision which provided the admissibility of selection scale on completion of 15 years of service after regular appointment on that post. The petitioner was promoted to still higher post of Senior Lecturer vide order dated 25.2.95 even though she completed 27 years of service on 3.8.95. In these circumstances, rectification of the mistake by the respondents vide Annex.3 cannot be held illegal. This order is therefore, held to be perfectly legal and justified.

Now arises the question with regard to recovery of the excess amount paid to the petitioner on the basis of wrongly granted selection scale w.e.f. 2.7.93 calculations of which are contained in Annexure-5. The respondents have not anywhere in reply to the writ petition come out with the plea that the grant of selection scale in the pay scale of Rs. 2000-3500 w.e.f. 2.7.93 was based on any misrepresentation or misstatement of fact made by the petitioner. They have also not attributed any fraud to the petitioner which eventually led to issuance of such wrong order granting her selection sclae of Rs.2000-3500 w.e.f. 2.7.93. It is trite law that certain payment, even if in excess, is made to a Government servant on account of lapse or mistake committed by the Department on its own without there being any misrepresentation made by the concerned Government servant, he cannot be held responsible for such mistake, although at the same time, the Department concerned may rectify the mistake by appropriately correcting fixations of such employee.

As a result of above discussion, the order dated 11.5.2000 (Annex.3) whereby wrong pay fixation was rectified is upheld. However, the Order Annexure-5

pursuant to which recovery of excess amount of Rs.38,329/- was directed to be made from the petitioner is quashed and set aside.

Accordingly, the writ petition is partly allowed as indicated above. There shall be no order as to costs.

(MOHAMMAD RAFIQ),J.

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